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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 KEVIN STRICKLAND,

8 Plaintiff,

9 v.

10 CITY OF WENATCHEE, a
11 municipal corporation; JEFF WARD,
12 in his individual and official
13 capacities; and JOHN DOES 1-10,

Defendants.

NO. 2:19-CV-0399-TOR

ORDER DENYING MOTION TO
DISMISS AS MOOT

14 BEFORE THE COURT is Defendants' Motion to Dismiss (ECF No. 4).

15 This matter was submitted for consideration without oral argument. The Court has
16 reviewed the record and files herein, the completed briefing and is fully informed.

17 For the reasons discussed below, Defendants' Motion to Dismiss (ECF No. 4) is

18 DENIED as moot.
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1 **BACKGROUND**

2 On November 18, 2019, Plaintiff filed a Complaint in Chelan County
3 Superior Court, alleging violations of his civil rights associated with his arrest and
4 the ultimate dismissal of criminal charges against him for the alleged rape of his
5 wife in September 2016. ECF No. 1-2. On November 19, 2019, Defendants
6 removed this case to federal court. ECF No. 1. On November 22, 2019,
7 Defendants filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). ECF
8 Nos. 4, 5. On December 9, 2019, while the motion to dismiss was pending,
9 Plaintiff filed an Amended Complaint as a matter of course pursuant to Fed. R.
10 Civ. P. 15(a)(1)(B). ECF No. 7. Plaintiff also filed a response to the motion to
11 dismiss, and Defendants replied. ECF Nos. 8, 9.

12 **DISCUSSION**

13 A party may amend its pleading once as a matter of course within 21 days of
14 service of a Rule 12(b) motion. Fed. R. Civ. P. 15(a)(1)(B). When an amended
15 complaint is filed, it “supersedes the original, the latter being treated thereafter as
16 non-existent.” *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997)
17 (citation omitted), *overruled on other grounds by Lacey v. Maricopa Cty.*, 693 F.3d
18 896, 928 (9th Cir. 2012). Where a motion to dismiss targets a complaint that has
19 been superseded by an amended complaint, the court should deem the motion to
20 dismiss moot. *Ramirez v. Cty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir.

1 2015). Here, Defendants' motion to dismiss targeted Plaintiff's initial Complaint,
2 which was superseded on December 9, 2019 by the Amended Complaint. ECF
3 No. 7. Although Defendants' reply memorandum discusses the Amended
4 Complaint, Defendants' substantive motion to dismiss targets the superseded initial
5 Complaint. ECF No. 9. Accordingly, Defendants' motion to dismiss is moot.
6 Defendants shall have leave to file a renewed motion to dismiss targeting the
7 Amended Complaint.

8 **ACCORDINGLY, IT IS HEREBY ORDERED:**

9 Defendants' Motion to Dismiss (ECF No. 4) is **DENIED** as moot.

10 The District Court Executive is directed to enter this Order, furnish copies to
11 counsel, and update the docket to reflect the additional defendants named in the
12 Amended Complaint.

13 **DATED** December 17, 2019.



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Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge